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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,814	01/22/2004	Anthony F. Gigliotti	035813-003	5015

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EXAMINER

VO, TED T

ART UNIT	PAPER NUMBER
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2191

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02/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,814

Applicant(s)

GIGLIOTTI ET AL.

Examiner

Ted T. Vo

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 20-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed on 11/23/2007.

Claims 1-15, 20-36 are pending in the application.

Response to Arguments

2. In view of the Applicants' amendment/remarks, filed on 11/03/07: It appears that Applicants traverse the obviousness and argue that,

Microsoft does not disclose receiving application and system information from one or more inoculation clients installed on the devices, said receiving performed via peer-to-peer communication.

In response to Applicants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicants argument that Microsoft does not disclose receiving... It is unclear what point in this argument, whether the argument is that Microsoft does not teach receiving application/information from the clients or Microsoft does not teach peer-to-peer. Applicants' argument does not directly to the main functionality of the claims, but is off from the heart of the specification. It should be note that the heart of the specification is to disclose patch management as Microsoft does. It should be noted that Internet provides two-way communication, where a clients within Microsoft can transparently use the Microsoft websites, as shown in p. 6 and p. 7, and p. 14, for providing the information. In p. 7, "Windows Update", it is for a client who communicates with its server for receiving

patch update. With a baseline security Analyzer, it allows users to scan (*queue*) one or more Windows-based computers for common security misconfigurations (p. 7-8). This is two-way communications. On the other hand, a peer-to-peer system according to the Microsoft dictionary is only a network of two or more computers that use the same program or type of program to communicate and share the data. Each computer acts like a server to other in the network. Thus, the inclusion of the peer-to-peer in a claim does not make it distinct from a pair of server/client computers, or a cluster of computers communicated in an organization like of Microsoft. Therefore, Microsoft discloses the claimed limitation above.

With regard to the Applicants arguing the GET and POST commands. It should be noted that GET/ADD/DELETE/POST commands are public use and standardized for sending request and response between two computers connected in a network via Browser using HTTP protocol. Microsoft users use this standard protocol.

See this standard POST and GET commands in The Network Working Group which defines the specification to address these standard commands for network communication. It is improper to address common and standard features used in public as a claimed feature, where with own.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-15, 20-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft White Paper, "Understanding Patch and Update Management: Microsoft's Software Update Strategy", Microsoft Corporation, pages: i-iii, 1-14, October 2003.

Given the broadest reasonable interpretation of followed claims in light of the specification.

As per Claim 1: Microsoft discloses,

A method for automatically distributing a software update to a network of devices controlled by an organization, the method comprising:

receiving application and system information from one or more inoculation clients installed on the devices, said receiving performed via peer-to-peer communication; (See the whole reference, particularly, Microsoft provides tools to a client within a small Organizations (p.7), Medium-Sized Organizations (p. 9), Large Organizations (p. 11), etc., these organizations are inoculation client application and system information peer-to-peer receiver);

comparing said application and system information with application and version information in a global update repository to determine if an update exists for a corresponding application controlled by an inoculation client, the global update repository including updates from multiple application manufacturers;

(For example, see, p. 7, p. 10, Microsoft Baseline Security Analyzer supports security update that has means for comparing application and system information with the application and version information in an update repository. The analyzer supports for performing the security updates portion of a scan. Also see p 11, Microsoft Download website ('update repository'). See p. 13, "Microsoft Update", scheduled for release in Spring 2004, will consolidate the patches and updates into one repository ('update repository'). At launch, Microsoft Update will support patches, updates, and service packs for Windows 2000, XP, Server 2000 & 2003 operating systems as well as Microsoft Office 2003, Microsoft SQL Server 2000, and Microsoft Exchange Server 2003);

queueing the update if an update exists for an application controlled by an inoculation client; receiving a communication from the corresponding inoculation client checking for available distribution jobs;

(For example, the baseline security Analyzer allows users to scan (*queue*) one or more Windows-based computers for common security misconfigurations (p. 7-8) (i.e. has means for *checking for available distribution jobs* – also has means for *comparing said application and system information*), Security Update Inventory Tool provides ongoing scans of client computers for installed or applicable security updates (p. 11), Microsoft Baseline Security Analyzer 2.0 provides a true enterprise-ready scanning technology (p. 13). See content within Microsoft Baseline Security Analyzer 2.0 (p.13)); and

automatically transmitting the update to the corresponding inoculation client in response to the receiving a communication if an update exists for an application controlled by the corresponding inoculation client (For example, see Distribute Software Updates Wizard Installer (p. 11-12) and see Office Update Inventory Tool).

Microsoft does not explicitly mention GLOBAL UPDATE REPOSITORY, but its website Microsoft Download website ('update repository') and in p. 13, "Microsoft Update", it mentions a future consolidation of a centralized update database.

Thus, it is obvious to the ordinarily in the art that, GLOBAL UPDATE REPOSITORY is only business manner complying the law or business license. It conforms to business agreements rather than an invention feature. For example, in p. 13, Microsoft clearly addresses that it can provide centralized server, and thus with a centralized server it can provide and update patching globally.

As per Claim 2: Microsoft discloses, ***The method of claim 1, further comprising: configuring an inoculation server distributed across one or more of the devices; and performing an initial connection between the inoculation server and the global update repository*** (For example, see P. 6: the AutoUpdate feature can be configured to retrieve patches directly from Windows Update at regular intervals. Individuals can choose whether to be prompted to install new updates or have them install

automatically. See p. 9-10: Clients are configured to connect to specific servers and can be configured for automatic software update installations or end-user prompting).

As per Claim 3: Microsoft discloses, *The method of claim 1, wherein the application and system information includes operating system information and version* (See content within Microsoft Update (p. 13)).

As per Claim 4: Microsoft discloses, *The method of claim 1, wherein the application and system information includes installed software applications and versions* (See Software Updates Installation Agent (p.12)).

As per Claim 5: Microsoft discloses, *The method of claim 1, wherein the application and system information includes network information* (For example, see Virus Information Alliance, p. 5).

As per Claim 6: Microsoft discloses, *The method of claim 1, wherein the application and system information is received in Extensible Markup Language (XML) format* (See Office Update Inventory Tool (p. 11)).

As per Claim 7: Microsoft discloses, *The method of claim 1, wherein the queuing the update includes linking the update package and the corresponding application in a database table* (For example, see Software Update Services Feature Pack, p. 11).

As per Claim 8: Microsoft discloses, *The method of claim 1, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* (i.e. Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 9: Microsoft discloses, *The method of claim 8, therein the global update repository mines, retrieves, and archives external update information* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 10: Microsoft discloses, *The method of claim 9, wherein the external update information is mined and retrieved from external security websites* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 11: Microsoft discloses, *The method of claim 10, wherein the global update repository uses web spiders* (i.e. Microsoft/Microsoft downloads Web site; or see "consolidate the patches and updates into one repository" (p. 13)).

As per Claim 12: Microsoft discloses, *The method of claim 1, wherein the comparing includes utilizing an HTTP GET or POST command.* (The commands are standard used by HTTP protocol. Functional equivalence: "command line operations for scanning one or more Windows-based computers" (p. 8); "MBSA UI or in the MBSA command line interface, seen in p. 7")

As per Claim 13: Microsoft discloses, *The method of claim 9, wherein the external update information contains a vendor type, the vendor type being automatic download and release, automatic download and manually confirm release, or manually download and confirm* (See section Software Update Service 2.0, p. 13).

As per Claim 14: Microsoft discloses, *The method of claim 1, wherein the comparing is performed by an inventory control engine* (e.g. Security Update Inventory Tool, p. 11).

As per Claim 15: Microsoft discloses, *The method of claim 1, wherein the queuing is performed by a distribution engine* (e.g. Distribute Software Updates Wizard, p. 12).

As per Claim 20: Microsoft discloses claim 20. See rationale in addressed in Claim 1.

As per Claim 21: Microsoft discloses, *The apparatus of claim 20, further comprising: means for configuring an inoculation server distributed across one or more of the devices; and means for performing an initial connection between the inoculation server and the global update repository.*

See rationale in addressed in Claim 2.

As per Claim 22: Microsoft discloses, *The apparatus of claim 20, wherein the application and system information includes operating system information and version.* See rationale in addressed in Claim 3.

As per Claim 23: Microsoft discloses, *The apparatus of claim 20, wherein the application and system information includes installed software applications and versions.* See rationale in addressed in Claim 4.

As per Claim 24: Microsoft discloses, *The apparatus of claim 20, wherein the application and system information includes network information.* See rationale in addressed in Claim 5.

As per Claim 25: Microsoft discloses, *The apparatus of claim 20, wherein the application and system information is received in Extensible Markup Language (XML) format.*

See rationale in addressed in Claim 6.

As per Claim 26: Microsoft discloses, *The apparatus of claim 20, wherein the queuing the update includes linking the update package and the corresponding application in a database table.* See rationale in addressed in Claim 7.

As per Claim 27: Microsoft discloses, *The apparatus of claim 20, wherein the global update repository is a centralized repository that manages operating systems and software to be delivered to inoculation servers.* See rationale in addressed in Claim 8.

As per Claim 28: Microsoft discloses, *The apparatus of claim 20, therein the global update repository mines, retrieves, and archives external update information.* See rationale in addressed in Claim 9.

As per Claim 29: Microsoft discloses, *The apparatus of claim 28, wherein the external update information is mined and retrieved from external security websites.*

See rationale in addressed in Claim 10.

As per Claim 30: Microsoft discloses, *The apparatus of claim 29, wherein the global update repository uses web spiders.* See rationale in addressed in Claim 11.

As per Claim 31: Microsoft discloses, *The apparatus of claim 20, wherein the means for comparing includes means for utilizing an HTTP GET or POST command.* See rationale in addressed in Claim 12.

As per Claim 32: Microsoft discloses, *The apparatus of claim 28, wherein the external update information contains a vendor type, the vendor type being automatic download and release, automatic download and manually confirm release, or manually download and confirm.* See rationale in addressed in Claim 13.

As per Claim 33: Microsoft discloses, *The apparatus of claim 20, wherein the means for comparing is an inventory control engine.* See rationale in addressed in Claim 14.

As per Claim 34: Microsoft discloses, *The apparatus of claim 20, wherein the means for queuing is a distribution engine.* See rationale in addressed in Claim 15.

As per Claim 35: Microsoft discloses claim 35. See rationale in addressed in Claim 1.

As per Claim 36: Microsoft discloses claim 36. See rationale in addressed in Claim 1.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

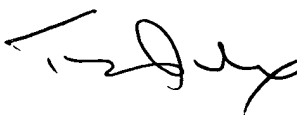
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTV
February 01, 2008


TED VO
PRIMARY EXAMINER